

EDWARD H. KUBO, JR. #2499  
United States Attorney  
District of Hawaii

DARREN W.K. CHING #6903  
LORETTA SHEEHAN #4160  
Assistant U.S. Attorney  
PJKK Federal Bldg., Room 6-100  
300 Ala Moana Boulevard  
Honolulu, Hawaii 96850  
Telephone: (808) 541-2850  
Facsimile: (808) 541-2958  
E-mail: [Darren.Ching@usdoj.gov](mailto:Darren.Ching@usdoj.gov)  
[Loretta.Sheehan@usdoj.gov](mailto:Loretta.Sheehan@usdoj.gov)

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

UNITED STATES OF AMERICA,	)	CR. NO. 04-00053 DAE
	)	
Plaintiff,	)	THIRD AMENDED GOVERNMENT'S
	)	PROPOSED JURY INSTRUCTIONS;
vs.	)	CERTIFICATE OF SERVICE
	)	
SILVER JOSE GALINDO,	)	
aka DANIEL S. GALINDO,	)	TRIAL DATE: APRIL 4, 2008
aka TIMOTHY MAU,	)	TIME: 9:00 A.M.
	)	JUDGE: DAVID ALAN. EZRA
Defendant.	)	
	)	

THIRD AMENDED GOVERNMENT'S PROPOSED JURY INSTRUCTIONS

The United States submits its proposed jury instructions to this Honorable Court. These instructions supersede any jury instructions previously submitted by the government. Permission of the Court is requested to subsequently withdraw any of the attached instructions, to modify them, or to

offer such additional instructions as may, during the course of the trial, become appropriate.

DATED: April 14, 2008, Honolulu, Hawaii.

EDWARD H. KUBO, JR.  
United States Attorney  
District of Hawaii

/s/ Darren W.K. Ching  
By \_\_\_\_\_  
DARREN W.K. CHING  
Assistant U.S. Attorney

Attorneys for Plaintiff  
UNITED STATES OF AMERICA

THIRD AMENDED GOVERNMENT'S PROPOSED JURY INSTRUCTIONS NO. 1

The defendant is charged in Count 3 of the Third Superseding Indictment with carrying a firearm during and in relation to a drug trafficking crime and with possessing a firearm in furtherance of a drug trafficking crime on or about March 11, 2004, in violation of Section 924(c) of Title 18 of the United States Code. The government may prove a defendant guilty of this offense in two ways. You, the jury, may find the defendant guilty of this charge under either or both methods, provided that the government has proven each element beyond a reasonable doubt. I will now explain the two methods by which the government may prove this charge.

1) Carrying a Firearm During and In Relation To a Drug Trafficking Crime:

In order for the defendant to be found guilty of carrying a firearm during and in relation to a drug trafficking crime as charged in Count 3, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant committed the crime of possession with the intent to distribute methamphetamine as charged in Count 2 of the Third Superseding Indictment;

Second, the defendant knowingly carried a firearm; and

Third, the defendant carried the firearm during and in relation to the drug trafficking crime.

Carrying is not limited to carrying weapons directly on the person, but can include circumstances such as carrying in a vehicle. A defendant "carries" a firearm when he:

(1) knowingly possesses it; and

(2) holds, moves, conveys, or transports it in some manner.

A person possesses a firearm if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

A defendant takes such action "in relation to the drug trafficking crime" if the firearm facilitated or played a role in the drug trafficking crime.

2. Possessing In Furtherance of a Drug Trafficking Crime:

In order for the defendant to be found guilty of possessing a firearm in furtherance of a drug trafficking crime as charged in Count 3, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant committed the crime of possession with the intent to distribute methamphetamine as charged in Count 2 of the Third Superseding Indictment;

Second, the defendant knowingly possessed a firearm;  
and

Third, the defendant possessed the firearm in furtherance of the drug trafficking crime.

The term "in furtherance of" means that the firearm was possessed to advance or to promote the crime charged in Count 2, and that the firearm was strategically located so that it was quickly and easily available for use.

You may find the defendant guilty in Count 3 of the Third Superseding Indictment if you find that the government has proven each element of carrying a firearm during and in relation to a drug trafficking crime beyond a reasonable doubt by so indicating on the verdict form.

You also may find the defendant guilty in Count 3 of the Third Superseding Indictment if you find that the government has proven each element of possessing a firearm in furtherance of a drug trafficking crime beyond a reasonable doubt by so indicating on the verdict form.

You also may find the defendant guilty in Count 3 of the Third Superseding Indictment if you find that the government has proven each element of both carrying a firearm during and in relation to a drug trafficking crime beyond a reasonable doubt and possessing a firearm in furtherance of a drug trafficking crime beyond a reasonable doubt by so indicating on the verdict form.

9<sup>th</sup> Cir. Model Crim. Jury Instr. 8.65; 6<sup>th</sup> Cir. Model Crim. Jury Instr. 12.02, 12.03, as modified (2007)

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

THIRD AMENDED GOVERNMENT'S PROPOSED JURY INSTRUCTIONS NO. 2

Voluntary intoxication does not provide a defense to the offense of:

- 1) possession of a firearm and ammunition in violation of Section 922(g)(1) of Title 18 of the United States Code,
- 2) the offense of carrying a firearm during and in relation to a drug trafficking crime in violation of Section 924(c) of Title 18 of the United States Code, and
- 3) the offense of possessing a firearm in furtherance of a drug trafficking crime, in violation of Section 924(c) of Title 18 of the United States Code.

United States v. Burdeau, 168 F.3d 352, 355 (9<sup>th</sup> Cir. 1999)(voluntary intoxication not available as a defense in general intent crimes); United States v. Klein, 13 F.3d 1182, 1183 (8<sup>th</sup> Cir. 1994); United States v. Bennett, 975 F.2d 305, 308 (6<sup>th</sup> Cir. 1992); United States v. Williams, 892 F.2d 296, 303 (3d Cir. 1989).

GIVEN \_\_\_\_\_  
REFUSED \_\_\_\_\_  
MODIFIED \_\_\_\_\_

## **CLEAN SET OF JURY INSTRUCTIONS**

INSTRUCTION NO. \_\_\_\_

The defendant is charged in Count 3 of the Third Superseding Indictment with carrying a firearm during and in relation to a drug trafficking crime and with possessing a firearm in furtherance of a drug trafficking crime on or about March 11, 2004, in violation of Section 924(c) of Title 18 of the United States Code. The government may prove a defendant guilty of this offense in two ways. You, the jury, may find the defendant guilty of this charge under either or both methods, provided that the government has proven each element beyond a reasonable doubt. I will now explain the two methods by which the government may prove this charge.

1) Carrying a Firearm During and In Relation To a Drug Trafficking Crime:

In order for the defendant to be found guilty of carrying a firearm during and in relation to a drug trafficking crime as charged in Count 3, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant committed the crime of possession with the intent to distribute methamphetamine as charged in Count 2 of the Third Superseding Indictment;

Second, the defendant knowingly carried a firearm; and

Third, the defendant carried the firearm during and in relation to the drug trafficking crime.



Carrying is not limited to carrying weapons directly on the person, but can include circumstances such as carrying in a vehicle. A defendant "carries" a firearm when he:

(1) knowingly possesses it; and

(2) holds, moves, conveys, or transports it in some manner.

A person possesses a firearm if the person knows of its presence and has physical control of it, or knows of its presence and has the power and intention to control it.

A defendant takes such action "in relation to the drug trafficking crime" if the firearm facilitated or played a role in the drug trafficking crime.

2. Possessing In Furtherance of a Drug Trafficking Crime:

In order for the defendant to be found guilty of possessing a firearm in furtherance of a drug trafficking crime as charged in Count 3, the government must prove each of the following elements beyond a reasonable doubt:

First, the defendant committed the crime of possession with the intent to distribute methamphetamine as charged in Count 2 of the Third Superseding Indictment;

Second, the defendant knowingly possessed a firearm;  
and

Third, the defendant possessed the firearm in furtherance of the drug trafficking crime.

The term "in furtherance of" means that the firearm was possessed to advance or to promote the crime charged in Count 2, and that the firearm was strategically located so that it was quickly and easily available for use.

You may find the defendant guilty in Count 3 of the Third Superseding Indictment if you find that the government has proven each element of carrying a firearm during and in relation to a drug trafficking crime beyond a reasonable doubt by so indicating on the verdict form.

You also may find the defendant guilty in Count 3 of the Third Superseding Indictment if you find that the government has proven each element of possessing a firearm in furtherance of a drug trafficking crime beyond a reasonable doubt by so indicating on the verdict form.

You also may find the defendant guilty in Count 3 of the Third Superseding Indictment if you find that the government has proven each element of both carrying a firearm during and in relation to a drug trafficking crime beyond a reasonable doubt and possessing a firearm in furtherance of a drug trafficking crime beyond a reasonable doubt by so indicating on the verdict form.

9<sup>th</sup> Cir. Model Crim. Jury Instr. 8.65; 6<sup>th</sup> Cir. Model Crim. Jury Instr. 12.02, 12.03, as modified (2007)

INSTRUCTION NO. \_\_\_\_

Voluntary intoxication does not provide a defense to the offense of:

- 1) possession of a firearm and ammunition in violation of Section 922(g)(1) of Title 18 of the United States Code,
- 2) the offense of carrying a firearm during and in relation to a drug trafficking crime in violation of Section 924(c) of Title 18 of the United States Code, and
- 3) the offense of possessing a firearm in furtherance of a drug trafficking crime, in violation of Section 924(c) of Title 18 of the United States Code.

United States v. Burdeau, 168 F.3d 352, 355 (9<sup>th</sup> Cir. 1999)(voluntary intoxication not available as a defense in general intent crimes); United States v. Klein, 13 F.3d 1182, 1183 (8<sup>th</sup> Cir. 1994); United States v. Bennett, 975 F.2d 305, 308 (6<sup>th</sup> Cir. 1992); United States v. Williams, 892 F.2d 296, 303 (3d Cir. 1989).

CERTIFICATE OF SERVICE

I hereby certify that on the date and by the methods of service noted below, a true and correct copy of the foregoing was served on the following at his last known address:

Served by Facsimile:

JACK SCHWEIGERT, ESQ.  
The Lawyers Building  
550 Halekauwila, Room 309  
Honolulu, HI 96813

April 14, 2008

Attorney for Defendant

/s/ Darren W.K. Ching

---

U.S. Attorney's Office  
District of Hawaii